

1. INTERPRETATION

1.1 In these Terms and Conditions the following definitions apply:

“IBSL”	means Ice Blue Sky Ltd or any of its subsidiaries or Partners providing related goods and services;
“Partner”	means an authorised partner of Ice Blue Sky Ltd who provides Ice Blue Sky Ltd goods and services, bound by a Partner agreement;
“Client”	means the individual or company to whom the Proposal is addressed;
“Service” or “Services”	means the goods or services specified in the Proposal;
“Proposal”	means a proposal, application, quotation, statement of work or other similar object describing the services; this Proposal may refer to supporting documentation providing detail and scope for the project.
“Deliverable”	means a set of goods or services that may be delivered at one time, for example: a design draft, a collection of printed items, a marketing plan document or a consultation meeting.
“Fee”	means the price for Service as detailed in the Proposal;
“Business Day”	means any day which is not a Saturday, Sunday or a bank or public holiday in England;
“Confidential Information”	for each party the terms of this agreement and all information and/or data belonging to or relating to that party, its associates, its or their businesses, activities, affairs, products, services, suppliers, Clients or prospective Clients disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by that party, its representatives or advisers, to the other party, its representatives or advisers whether before, on or after the date of this agreement;
“Intellectual Property Rights”	means any patent, trademark, service mark, registered design, copyright, design right, right to extract or exploit information from a database, database rights, know-how, confidential information or process, any application for any of the above, and any other Intellectual Property Right recognised in any part of the world whether or not presently existing or applied for;
“Working Expenses”	means disbursements and expenses incurred in carrying out the Services including: accommodation, subsistence, postage, telephone calls, entertainment and travel.
“Terms and Conditions”	means the terms and conditions of supply of Services as set out in this document and any subsequent terms and conditions agreed in writing by IBSL and the Client;
“Agreement”	means the contract between IBSL and the Client for the provision of the Services incorporating these Terms and Conditions;

1.2 In these Terms & Conditions (except where the context otherwise requires):

1.2.1 the clause headings are included for convenience only and shall not affect the interpretation of these Terms & Conditions;

1.2.2 use of the singular includes the plural and visa versa;

1.2.3 use of any gender includes the other genders;

1.2.4 any reference to “persons” includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations, and trusts (in each whether or not having separate legal personality);

1.2.5 any reference to a statute, statutory provision or subordinate legislation (“legislation”) shall (except where the context otherwise requires) be construed as referring to:

time and to any legislation which (either with or without modification) re-enacts, consolidates or enacts in rewritten form any such legislation; and

b) any former legislation which re-enacts, consolidates or enacts in rewritten form.

1.2.6 any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. GENERAL

2.1 These Terms and Conditions supersede any previous agreements, arrangements, documents or other undertakings either written or oral. Any subsequent email correspondence will be referred to as the official record of client/contractor expectations or Terms and Conditions amendments.

2.2 These Terms and Conditions shall be attached to any Proposal and signed and returned to IBSL by the Client.

2.3 These Terms and Conditions may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

2.4 IBSL acts as a principal at law and not as the agent of the Client in all its dealings with third party suppliers. The Client shall be directly responsible to such parties for payment of their fees/ invoices.

2.5 Any variation to the Services must be agreed by IBSL and the Client in writing.

2.6 Client and IBSL are independent parties. Nothing in the Agreement will be construed to make either party an agent, partner, employee, of the other party.

2.7 All rights and obligations under this Agreement are personal as between the parties. IBSL may not assign or otherwise transfer any right or obligation hereunder or interest herein without the express prior written consent of Client.

3. NOTICES

3.1 Any notice or other communication pursuant to this agreement must be in writing and signed by or on behalf of the party giving it and may be served by online signature service, pre-paid first class post to the address of the relevant party as set out in this agreement, by fax or subject to the provisions of clause 3.2 by email. All such notices or demands shall be deemed to have been received:

3.1.1 in the case of pre-paid first class post two Business Days after posting; and

3.1.2 in the case of fax, at the time of transmission, provided that if receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day, and if receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice or demand shall be deemed to have been received at 9am on the next Business Day.

3.2 Email communication shall not be effective unless the addressee acknowledges receipt of such communication; such acknowledgement to take the form of an email to include or reference the communication being acknowledged.

4. CLIENT OBLIGATIONS

4.1 The Client agrees to cooperate with IBSL and shall provide any support, information and facilities to IBSL as may be required.

4.2 The Client agrees to refrain from directly or indirectly recruiting any person employed or engaged by IBSL, IBSL also agrees to refrain from directly or indirectly recruiting any person employed or engaged by the Client for the purpose of providing the Services for a period of 12 months following completion of the Services.

4.3 The Client shall nominate a named individual to whom all requests for approval should be sent by IBSL.

4.4 The Client's written approval of copy, layouts, artwork, scripts, storyboards will be IBSL's authority to buy production materials, prepare proofs, enter into production agreements and to engage 3rd parties suppliers, speakers and performers. All third party costs will be agreed in advance with the Client.

5. IBSL OBLIGATIONS

5.1 IBSL will supply the Services as specified in the Proposal.

5.2 IBSL shall perform the Services with reasonable skill and care and to a reasonable standard and in accordance with recognised codes of practice and statutory obligations.

3. IBSL shall be responsible to delegate any obligations to other employees or subcontractors but undertakes to notify the Client of any significant changes to personnel, and is responsible for the performance of any sub-contractors.

5.4 IBSL will maintain appropriate insurance in accordance with industry practice.

5.5 IBSL shall comply with all regulations and statutory obligations regarding the use and storage of information relating to the Client.

6. PROPOSALS AND ACCEPTANCE

6.1 IBSL shall provide a Proposal to the Client for each project. The Proposal forms part of this agreement, upon agreement from the Client.

6.2 The Client assumes sole responsibility for ensuring that the Service described in the Proposal meets its requirements before signing the Proposal.

6.3 The Client shall return the signed Proposal by letter, fax or email as described in clause 2. Upon receipt of this order acknowledgement, a contract shall be created between IBSL and the Client for the supply of the Service under these Terms and Conditions.

6.4 By purchasing the Service, the Client acknowledges that it has read these Terms and Conditions, understands them and agrees to be bound by them.

6.5 Proposals shall remain valid for acceptance for a period of 30 days.

6.6 The Agreement between IBSL and the Client, incorporating these Terms and Conditions, shall only come into force when IBSL confirms acceptance in writing to the Client.

7. PAYMENT TERMS

7.1 For printing and physical goods, unless otherwise stated in the Proposal, the Fee shall be payable to IBSL on receipt of the order acknowledgement.

7.2 For ad-hoc project work consisting of a single Deliverable, unless otherwise stated in the Proposal or where a credit account has been approved, the Fee shall be payable to IBSL on delivery of the Deliverable.

7.3 For retained work billed monthly, unless otherwise stated in the Proposal, the agreed monthly element of the Fee shall be invoiced by IBSL by the first working day of the month, in advance of the work to be carried out.

7.4 Prior to each payment, IBSL shall issue an invoice to the Client. Unless otherwise stated in the Proposal or where a credit account has been approved by IBSL in writing, each invoice is payable in 30 days from the date of the invoice.

7.5 IBSL is not obliged to carry out any work related to a Proposal before it has been accepted by the Client. In the event that any preliminary work is carried out prior to receipt of the payment and the order is then cancelled, IBSL will invoice the Client for this work.

7.6 The Fee is exclusive of VAT. VAT shall be charged at the prescribed rate at the date of invoicing. The Client shall pay the VAT to IBSL as if it were part of the Fee and all requirements and other provisions concerning payment of the Fee shall apply accordingly.

7.7 All payments shall be paid in full without setoff, deduction or counterclaim whatsoever. The Client is not entitled to withhold any monies due to IBSL, save and except in the event of a bona fide dispute.

8. VARIATIONS TO PRICING

8.1 Where the Proposal includes design, video, animation, copywriting, website content management or translation work, the Fee includes an allowance for two sets of changes to each Deliverable. Additional changes shall be charged at the prevailing hourly rate. Any such variation shall be advised by IBSL in writing and confirmed by the Client in writing before either the work proceeds further or any charges are incurred.

8.2 Where a Proposal is for a larger programme of work and contains unspecified prices or estimated prices, IBSL will submit an accurate quotation for each item to the Client for approval.

8.3 Where a Proposal contains fees that will be charged as Time and Materials, then IBSL will invoice the Client, normally monthly, for all work and costs at the going rate incurred to date to deliver the Services. IBSL will supply a detailed breakdown of time and costs to the Client upon request.

8.4 The charge for carriage of goods is at additional cost to the Client, unless otherwise stated in the Proposal.

8.5 IBSL reserves the right to vary the Fee according to further requirements made by the Client subsequent to order acknowledgement. Any such variation shall be advised by IBSL in

writing and confirmed by the Client in writing before either the work proceeds further or any charges are incurred.

8.6 IBSL reserve the right to charge Working Expenses when fulfilling the work which are not included in the Fee unless specified in the Proposal:

8.6.1 Any mileage shall be charged at the rate of £0.45p per mile.

8.6.2 No expenses shall be incurred without the Client's express written agreement.

8.7 Event management fees are subject to the receipt by IBSL of any venue commission and requires that IBSL make any venue booking on behalf of the Client. Where the Fee is dependent upon receipt of such commission and a Client books a venue directly or through another third party IBSL will invoice the Client for the lost commission.

8.8 In the event that expenses are specifically agreed outside of 8.6, then these must be pre-agreed in writing by Client and be reasonably incurred in connection with the performance of Services under this Agreement and prior to the termination of this Agreement. Any agreed expenses shall only be reimbursed on production of appropriate receipts.

8.9 The Fee, once accepted by both parties as signified by the receipt of a signed Proposal, is applicable for 12 months from the date of signing. IBSL reserves the right to increase the price of any work outstanding after that period.

8.10 If payment is not made on the due date, interest may be charged in respect of any undisputed outstanding payment at a rate of 2% above the Barclay's Bank PLC base rate from the due date until date of payment.

9. CANCELLATION

9.1 For retained work billed monthly and where no contract period has been explicitly stated on the Proposal, the contract may be terminated by the Client giving 90 days notice in writing according to clause 2.1.

9.2 Unless otherwise stated in the proposal or subject to clause 9.1, the contract may be cancelled by the Client giving 60 days notice in writing.

9.3 The Client shall have no right to seek any cancellation or repayment of job costs on the basis of style or composition. Any changes or amendments to the signed Proposal will not be agreed without discussion and mutual consent. IBSL will reasonably work to re-deliver work which has been deemed unsuitable.

10. EXCLUSIVITY

IBSL's assigned personnel to a Client will not represent conflicting or competing interests without prior agreement with the Client. Client will also advise IBSL of any intention to engage or use internal or external Graphic Design, Marketing, Video, Photographic, PR, Telemarketing or Events services other than those already advised and documented.

11. COMPLIANCE AND INTELLECTUAL PROPERTY RIGHTS

11.1 It is the responsibility of both IBSL and the Client to ensure that the Deliverables comply with all laws, regulations and codes in all countries where the Deliverables are used.

11.2 Once the project has been completed, signed off, and full payment made, the ownership of the rights to the artwork and any imagery created will pass to the Client.

11.3 Third party materials, such as imagery, used in the Deliverables may be subject to usage liabilities such as royalties and license fees. IBSL shall procure such license as necessary for the use of third party materials for use within the scope of the Proposal.

12. INTELLECTUAL PROPERTY

12.1 Any Intellectual Property Rights created as a product of the Services shall become the property of the Client upon payment in full, unless otherwise agreed in writing.

12.2 The Client shall provide IBSL with copies of all trade marks and other intellectual property that represents the branding of the Client which are to be included in the performance of the Services. The Client hereby grants IBSL a royalty free licence to use, copy and reproduce such trade marks and branding for the purpose of developing the output created by the Services.

12.3 IBSL will obtain all copyright and a waiver of moral rights in respect of work sub-contracted to or acquired from third parties but it cannot undertake that in all cases it will be able to do so. In the event that IBSL is unable to obtain copyright or a waiver of moral rights in respect of such work IBSL shall inform the Client before any appropriate agreement is entered into.

13.1 CONFIDENTIALITY AND NON-DISCLOSURE

13.1 During the period of this agreement and for a period of 3 years after both parties undertake:

13.1.1 to keep the Confidential Information confidential;

13.1.2 not to use the Confidential Information for any purpose except the performance of its obligations under this agreement; and

13.1.3 not to use the Confidential Information so as to procure any commercial advantage over the other party.

13.2 The obligations contained in clause 8.1 above shall not apply to any Confidential Information which:

13.2.1 is already in the possession of the disclosing party other than as a result of a breach of this agreement;

13.2.2 is at the date of this agreement or at any time after the date of this agreement comes into the public domain other than through breach of this agreement; or

13.2.3 is required to be disclosed by any applicable law or regulation or by any governmental or administrative authority or by an order of any court of competent jurisdiction.

13.3 Each party undertakes to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of clause 13 by its employees, agents and sub-contractors.

13.4 The Client agrees that the ideas, materials and other documents relating to the Service are confidential and all proprietary rights belong to IBSL and shall not be used or disclosed except as permitted by this agreement.

13.5 This clause 13 shall survive the termination of this agreement for whatever reason.

14. SUB-CONTRACTS AND 3RD PARTIES

14.1 IBSL will monitor all production companies and suppliers to whom work is allocated on a sub contracting basis to ensure that:

14.1.1 all deadlines are met and that all agreed budgets are not exceeded;

14.1.2 all necessary consents, clearances and licences are obtained;

14.1.3 all necessary consents, clearances and licences are obtained in respect of copyright and any other rights performances, music and all other constituent elements of the advertising as defined in the description of the Services;

14.1.4 all artists are properly contracted for appearances, repeats and/or buy-outs.

15. LIMITED WARRANTY

15.1 The following provisions set out the entire financial liability of IBSL and the Client (including any liability for the acts or omissions of its employees, agents or subcontractors) to the other party in respect of:

15.1.1 any breach of this agreement; and

15.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the contract.

15.2 Nothing in these Terms and Conditions shall prejudice any condition or warranty, express or implied, or any legal remedy to which IBSL may be entitled in relation to the Services, by virtue of any statute, law or regulation.

15.3 Subject as expressly provided in these conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

15.4 Nothing in these conditions excludes or limits the liability of either party for death or personal injury caused by negligence or for fraudulent misrepresentation.

15.5 Subject to clauses 15.3 and 15.4:

15.5.1 Neither party shall be liable to the other party for any loss or damage, costs or expenses (whether direct, indirect or consequential and whether relating to loss of profit, loss of business, business interruption, loss of data, depletion of goodwill or other such losses), suffered by the other party which arise out of or in connection with the supply of the Service or their use by the Client.

15.5.2 The total liability of either party in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise arising in connection with the performance or contemplated performance of this contract shall be limited to, and in no event shall exceed, the amount originally paid to IBSL for the Service.

15.6 No verbal or written information or advice given by IBSL or its directors, distributors, employees or agents shall in any way extend, modify or add to the foregoing warranty.

15.7 Where a Deliverable includes goods to be received by the Client:

15.7.1 The passing of risk shall occur on the day of the delivery to the Client.

15.7.2 If goods are received by the Client in any way damaged upon delivery, the Client must advise IBSL within 24 hours of delivery of the nature of the damage and must retain the Goods as delivered.

15.8 All times or dates given for delivery of the Service are given in good faith and shall not be of the essence of any contract.

15.9 IBSL shall use best efforts to achieve any quoted delivery dates and execute any obligations set out in the Proposal but will not be under any liability if delivery is delayed or prevented by events beyond its control or as a result of delays by the Client.

16. DISPUTE RESOLUTION

16.1 In the event of any dispute, question or difference arising as to the construction or effect of this Agreement ("a Dispute"), the same shall first be referred to the Client and the Managing Director of IBSL who shall negotiate in good faith to achieve commercially a resolution of the dispute.

16.2 If such negotiations shall not take place or shall be unsuccessful then, prior to and as a condition precedent to the submission of a Dispute to arbitration, the parties shall refer the Dispute to "Mediation". The Mediator shall be agreed upon by the parties and failing such agreement within 10 days of one party requesting the appointment of a Mediator and providing their suggestion, the Mediator shall be appointed by the then President of the Law Society of England and Wales. Unless agreed otherwise, the parties shall share equally the costs of the mediation. The use of mediation will not be construed under the doctrine of laches, waiver or estoppel to affect adversely the rights of either party;

16.3 Should the parties fail to resolve the Dispute though within 30 days of reference to Mediation, either Mediation party may refer such Dispute to arbitration in London by a single arbitrator to be appointed (in default of agreement) by the President for the time being of the Chartered Institute of Marketing under the Arbitration Act 1950 (as amended) and his decision shall be final and binding on the parties hereto.

16.4 Nothing in this clause shall exclude the right of a party to seek injunctive relief from a court of competent jurisdiction.

17. DATA PROTECTION

17.1 Where IBSL obtains any personal data (as defined by the GDPR Legislation passed in 2018) ("the Act"), it shall ensure that it fully complies with the provisions of the Act and only deals with the data to fulfil its obligations under the Agreement.

17.2 IBSL shall indemnify the Client for any breach of the Act as a result of IBSL's actions which renders the Client liable for any costs, claims or expenses.

17.3 In fulfilment of its obligations under the Act, IBSL and the Client shall each have such systems in place to ensure:

a) Full compliance with the Act

b) In particular, compliance with the security of personal data

c) The reliability of all its employees who may be involved in processing the personal data

17.4 IBSL shall take all reasonable steps to ensure that all its partners contractors and agents comply with this clause where they are processing any personal data on behalf of the Client.

17.5 IBSL shall allow the Client reasonable access to such information as is necessary to ensure that it is complying with the above provisions and the Act as a whole.

17.6 Upon termination or expiration of the Agreement for whatever reason, or upon request by Client, IBSL shall immediately cease to process the Personal Data and shall promptly return to Client all such Personal Data, or destroy the same, in accordance with such instructions as may be given by Client at that time. The obligations set out in this Section 17.4 shall remain in force notwithstanding termination or expiration of the Agreement.

18. CONFLICT OF INTEREST

IBSL shall notify the Client within a reasonable period of time upon becoming aware of any possible conflict of interest that may arise between the interests of the Client and any part of the Client's business. The parties shall, upon such notification, seek to agree, as soon as reasonably practicable, reasonable steps to remove any potential effect of or avoid any such conflict of interest.

19. FORCE MAJEURE

Neither party shall be liable for any delay or failure in performance of its obligations under this agreement which is due to or results from any circumstances beyond its reasonable control. In any such event either party shall be entitled to delay or cancel delivery of the Deliverables or performance of the Services.

20. SEVERABILITY

If at any time one or more of the terms or provisions of this agreement becomes in whole or in part void, invalid, or unenforceable then the remainder of this agreement shall nevertheless be valid and enforceable.

21. WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions.

22. ASSIGNMENT

Both parties reserve the right to assign or transfer this Agreement to any other party, without the express written permission of each other, such consent not to be reasonably withheld, delayed or conditioned. This Agreement shall be binding upon each party's successors.

23. AGREEMENT DOCUMENTATION

Each party acknowledges that it has entered into an Agreement in reliance only on the representations, warranties, promises and terms contained or expressly referred to within the Proposal and as expressly set out in these Terms and Conditions. Neither party shall have any liability in respect of any other representation, warranty or promise unless it was made fraudulently.

24. THIRD PARTY RIGHTS

Unless expressly provided in this agreement, no term of this agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

25. GOVERNING LAW AND JURISDICTION

This validity, construction and performance of this agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales whose courts are the courts of exclusive jurisdiction to which the Parties submit.

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